

March 23, 2006

Sarah Ferguson Town of Felton P.O. Box 329 Felton, DE 19943

RE: PLUS review – PLUS 2006-02-13; Town of Felton Comprehensive Plan Amendment

Dear Ms. Ferguson:

Thank you for meeting with State agency planners on March 1, 2006 to discuss the proposed Town of Felton comprehensive plan amendments.

Please note that changes to the plan, other than those suggested in this letter, could result in additional comments from the State. Additionally, these comments reflect only issues that are the responsibility of the agencies represented at the meeting.

The following are a complete list of comments received by State agencies:

### Office of State Planning Coordination – Contact: David Edgell 739-3090

*Certification Comments:* These comments must be addressed in order for our office to consider the plan amendment consistent with the terms of your certification and the requirements of Title 22, § 702 of the <u>Del. Code</u>.

- 1. The annexation plan map must clearly indicate future land uses for the annexation parcels.
- 2. The Town must demonstrate that both Kent County and the Town of Viola have been informed of this planning process, and have been coordinated with to the extent that is practical for the town. The plan must also document public

- participation efforts that have been undertaken, and note any response to concerns raised by the public. The current draft does not include any indication that the plan has been presented to the public or the other jurisdictions.
- 3. The Town must demonstrate that it has coordinated with DelDOT's Corridor Capacity Preservation Program, and addressed all comments and concerns of that program in the transportation section of the final plan.
- 4. Provide the amended Map 7 in the final plan submission.
- 5. Please prepare and submit an annual report for our records prior to plan certification. Although annual reports are required by <u>Del.C.</u>, we have not received an annual report from Felton for 2004 or 2005. A suggested format for the annual report is attached. The annual report is due on the anniversary of plan certification each year.
- 6. Our office will not accept this amendment to the Town of Felton's certified comprehensive plan until all outstanding Plan of Service issues are resolved. At this time, the Plan of Services for the Voshell annexation is incomplete, although the Town has proceeded with the annexations as per their charter. Please be advised that a completed Plan of Services is required prior to annexation by Title 22, Section 101 of the <u>Del. C.</u> In the future, do not proceed with annexations until a completed Plan of Services has been accepted by our office.
- 7. Section 7.3a incorrectly notes that the "entire annexation amendment area is within the Level 2 strategy area. . ." In fact, portions of the annexation amendment area are within Levels 2, 3 and 4. Please revise this section accordingly.
- 8. Section 7.3a also incorrectly notes that the "entire annexation amendment area" is in a "transferred development rights receiving area." In fact, the southern most portion is not in a receiving area according to the approved Kent County Transfer of Development Rights Ordinance (As per the map labeled "Attachment B, revised" that is part of their TDR ordinance). I suggest that you contact Kent County Planning to confirm, and amend this text as necessary.
- 9. Amend the final paragraph of Section 7.3a to note that the State has designated areas identified as Investment Level 2 as desirable for growth in the near term future. As we have noted above, there are some lands in the annexation amendment area that are in Levels 3 and 4.
- 10. The annexation plan should avoid the creation of enclaves. While we appreciate the town's concern regarding current availability of sewer and water for certain enclaves, it is short sighted to leave them out of the plan. Our office will only consider an annexation plan for certification that does not include enclave areas.
- 11. It is the policy of the Delaware Department of Agriculture to oppose the inclusion of active agricultural preservation districts in municipal annexation areas. Please remove all active agricultural preservation districts from the annexation plan. These districts may not be identified on any of the plan maps, except as

agricultural districts. An optional note may be attached to certain parcels. Please contact our office to discuss the text of the note if desired.

**Recommendations:** Our office strongly recommends that the Town consider these recommendations as you revise your plan.

- 1. It is recommended that all annexation parcels be designated with a future land use. It is not recommended that the town use the "existing" or "existing use" designation. This terminology is frequently used in DBF plans, and has proven to be problematic in other towns.
- 2. Section 7.2d indicates that the town will review and update the water facility plan "if significant change is noted." It is recommended that the Town engage in this update now, based upon this revised annexation area and other planning activities. Due to the fact that annexations are often rushed by applicant's desires to begin development projects, it would be prudent to do this review now to avoid delays in the future.
- 3. It is recommended that the town describe the Transfer of Development Rights receiving areas in more detail, in text and map form. Is it the intention to consider TDR plans on any property that is currently a TDR receiving area in the County? If so, please note this in the plan and on the map series. Our office encourages the Town to do so in order to ensure that there is a viable supply of TDR receiving areas in the future.
- 4. It is recommended that the Town work with the Kent County Department of Planning Services on a TDR ordinance that works in conjunction with Kent County's program.

#### Other Comments:

- 1. Our office supports the inclusion of Transfer of Development Rights provisions into the town's plan and ordinances. We are available to assist the town in any way possible with the implementation of TDRs.
- 2. Please thoroughly review the document for spelling and grammar errors before submitting the final copy for review.

## Division of Historic and Cultural Affairs - Contact: Alice Guerrant 739-5685

The planning area outlined in this plan update includes the Gov. George Truitt House (K-928), which is listed in the National Register of Historic Places, and dozens of inventoried historic properties. There are many areas with high potential for prehistoric-period and historic-period archaeological sites.

The plan briefly acknowledges the town's historic resources, including the Felton Historic District (K-5305) listed in the National Register, but does not contain any consideration for the preservation and protection of historic properties that may be annexed into the town in future. The DHCA office will be happy to assist them in developing ordinances and preservation alternatives for such properties.

## **Department of Transportation – Contact: Bill Brockenbrough 760-2109**

- The introductory material supplied with the amendment states that the total annexation area would be increased from the 405 acres in the amended plan to about 1,050 acres. This would be a significant increase anywhere but for a town the size of Felton, it is quite large. Therefore, DelDOT is concerned that the amendment does not mention community involvement. They recommend that the Town hold an informational meeting to foster discussion between town residents and the Planning Commission and Council before formal consideration of the amendment.
- 2) Section 7.2c, Resource Protection, states that "Connectivity via intersecting streets with sidewalks remains a priority and development plan requirement." DelDOT is pleased to see this statement, but they would have expected to see it in Section 7.2d, Infrastructure.
- The Growth Area Time Phasing map submitted with the PLUS application was significant for what it omitted. Especially within the area bounded by US Route 13, Reeves Crossing Road (Kent Road 286), the railroad tracks and Plymouth Road (Kent Road 239 a.k.a. Barretts Chapel Road), many smaller lots were omitted from consideration. DelDOT urges the Town to plan for the annexation of those properties as well. Not doing so would leave the Town with boundaries that would be difficult to follow and would leave the portion north of Peachbasket Road (Kent Road 241) largely unattached from the rest of the Town. The revised map shown at the PLUS meeting is much better in these regards but it too could be improved. We understand and accept the Town's reasons for excluding the lots along the west side of Chimney Hill Road (Kent Road 385).
- 4) Route 13 through Felton is subject to the Corridor Capacity Preservation Program (CCPP). The purpose of this program is to preserve the capacity of certain arterial highways to handle through traffic by limiting access along them. This program will affect the development of some of the lands proposed for possible annexation. DelDOT recommends that the Town contact the manager of that program, Mr. Charles Altevogt, to discuss this matter before formal consideration of the amendment. Mr. Altevogt may be reached at (302) 760-2124.

# <u>The Department of Natural Resources and Environmental Control – Contact:</u> Kevin Coyle 739-9071

The following recommendations reflect the Watershed Assessment Section's concerns related to Section 7-2c (Resource Protection Section) of the Town of Felton's Comprehensive Plan Amendments and Municipal Ordinances document:

# **Recommendation 1: Implement an ordinance that requires proof of compliance with Federal wetlands regulations**

It is strongly recommended that the City of Felton adopt an ordinance or policy that requires as part of the land approval process, a United States Army Corps of Engineers (USACE)-approved wetlands delineation.

# **Recommendation 2: Mention TMDL regulatory requirements**

The TMDL for the Murderkill Watershed (including the entire Town of Felton) will require post-development nitrogen and phosphorus load reductions of 50 and 30 percent, respectively. It is strongly recommended that specific mention of such reductions be included in the comprehensive plan narrative.

# **Recommendation 3: Implement ordinances requiring Best Management Practices** (BMPs)

To ensure consistency with State recommendations and help ensure the attainment of the required TMDL nutrient reductions for nitrogen and phosphorus, it is strongly recommended that the Town adopt an ordinance requiring a 100-foot minimum upland buffer width be maintained between all wetlands/water bodies and all recorded lot line boundaries. It is further recommended that the Town adopt an ordinance requiring the implementation of "green-technology" stormwater management practices in lieu of outdated open-water stormwater management.

#### Water Resource Protection Areas

As a result of the expansion, the town will have lands that are classified as excellent recharge areas, particularly at the southern extreme which is planned for 2009 - 2011. There is also a small excellent recharge area in the north that will fall within the new city boundaries. In addition, there is possibility that a few small source water areas located to the south along Reeves Crossing will also fall within the town boundaries. As such, the town is encouraged to adopt source water protection measures that address their existing wellhead areas that already fall within the town limits. Further, they will need to

consider protection measures for the excellent recharge areas. Once the town population reaches 2,000, they will be required to adopt such measures.

# **Drainage**

After review of the amendment to the Town of Felton 2003 Comprehensive Plan (PLUS 2006-02-13), the Drainage Program of the Division of Soil and Water Conservation, Department of Natural Resources and Environmental Control has the following comments. For questions or clarifications, please contact Jim Sullivan at 739-9921.

The Drainage Program has noticed the Town of Felton has not enacted ordinances to address the recommendations of the approved 2003 Comprehensive Plan. However, the Drainage Program is requesting for specific issues be addressed through revisions to the planning and zoning code. For the benefit of drainage, stormwater management, water quality, and recreational opportunities, the Drainage Program proposes the following recommendations and requests appropriate ordinances be in place before further annexation.

- The Drainage Program request all storm drains and catch basins within the annexation area be on open space or within street right-of-ways. However, the Drainage Program recognizes the need for catch basins in rear and side yards in certain cases. Therefore, catch basins placed in rear and side yards will need to be clear of obstructions and be accessible for maintenance. Decks, sheds, fences, and kennels can hinder drainage patterns as well as future maintenance to the storm drain or catch basin. Deed restrictions, building setback lines, along with drainage easements recorded on deeds, should ensure adequate future maintenance access. Drainage easements and building setbacks for storm drains and catch basins should be 15 feet on each side of the pipe or catch basin.
- The Drainage Program recognizes the need for open swales in rear and side yards in certain cases. Swales placed in rear and side yards will need to be clear of obstructions and be accessible for maintenance. Decks, sheds, fences, and kennels can hinder drainage patterns as well as future maintenance to the swale. Deed restrictions, building setback lines, along with drainage easements recorded on deeds, should ensure adequate future maintenance access. Drainage easements and building setbacks should be 15 feet on each side of the swale as measured from the centerline or to the extent of the swale whichever is greater.
- Water bodies, ponds, intermittent and perennial streams, ditches should be buffered from development. Existing buffers could be enhanced or new buffers planted to obtain 100-foot buffers on each side of the existing water conveyance.

A minimum 50-foot tree and shrub planting on buffers with the tallest trees planted on the south and west side of the water conveyance will maximize shading of water. Trees and shrubs should be native species, spaced to allow for mechanized drainage maintenance at maturity. Tree and shrub planting in this manner will provide a shading effect promoting water quality while allowing future drainage maintenance. Do not plant trees closer than 5 feet of the top of the bank to avoid future blockages from tree roots. Plant the balance of the 100-foot buffer, as well as stream and ditch banks, with herbaceous vegetation to aid in the reduction of sediment and nutrients entering into water conveyance. Grasses, forbs and sedges planted within these buffers should be native species, selected for their height, ease of maintenance, erosion control, and nutrient uptake capabilities. Remove invasive vegetation prior to the planting of native species. The construction of pedestrian and bicycle paths within the outer 50 foot of the buffer should be encouraged.

- Wetlands should be protected from development with a 50-foot vegetated buffer. Grasses, forbs and sedges planted within these buffers should be native species, selected for their height, ease of maintenance, erosion control, and nutrient uptake capabilities. Remove invasive vegetation prior to the planting of native species.
- Designate all buffers for water bodies, ponds, intermittent and perennial streams, ditches, and wetlands as un-subdivided open space. No portion of any building lot should be within the buffers.
- Designate all wetland buffers as un-subdivided open space. No portion of any building lot should be within the buffers. During prolonged wet periods, the wetland buffers may become too wet for normal residential use. Designation as open space will aid in the prevention of decks, sheds, fences, kennels, and backyards being placed within the buffers thereby reducing nuisance drainage complaints.
- The Drainage Program recommends adding the definition of buffer, vegetative buffer, riparian buffer and other such key words to the planning and zoning code.
- Require vegetative buffers be designed by a Landscape Architect or Certified
  Nursery Professional and specify the native plants to be used in buffers and
  passive open space. The Kent County Coastal Zone Protection Overlay Ordinance
  has a listing of native plants. For additional information on native plants suitable
  for residential areas, contact the Delaware Natural Heritage Program.

- Existing woodland provides valuable wildlife habitat as well as soil erosion
  protection and water quality filtering. Preserve existing woodland within the
  proposed annexation. Do not allow the clearing of woodland to create stormwater
  management areas. Develop a tree planting guideline, a tree mitigation planting
  guideline and woodland preservation language to protect the existing woodland
  from harvest after annexation.
- For new subdivisions, the developer's engineer should check the existing downstream conveyance and pipes for function and blockages prior to the town's approval of plans and annexation. The developer should notify downstream landowners of any change in volume of water released on them. The examination of downstream conveyance and notification to downstream landowners should not stop at the town boundary.

Evaluate the existing drainage patterns within the planning area to ensure adequate drainage for the cumulative stormwater impact upon full build out of the proposed annexation. The town should be mindful of potential stormwater impacts from the town onto county residents.

Plan a pedestrian and bicycle path within the proposed annexation to allow town residents a corridor to access Killens Pond State Park from the northern portion of town and have potential developers implement the path into their designs accordingly. Some potential sites are:

- Buffer the branch from Turkey Point Road to Plymouth Road.
- Buffer Pratt Branch from U. S. RT 13 to Chimney Hill Road.
- Buffer Fan Branch and the railroad south to Reeves Crossing Road.

## **Natural Areas Inventory**

The southern portion of the annexation plan for the Town of Felton includes portions of the Murderkill River Natural Area.

# State Fire Marshal's Office - Contact: John Rossiter 739-4394

The DE State Fire Marshal's Office has the responsibility to review all commercial and residential subdivisions for compliance with the DE State Fire Prevention Regulations. This Agency asks that a MOU be established between the DE State Fire Marshal's Office and the Town of Felton. The State Fire Marshal's Office would be issuing approvals much like DelDOT, Kent Conservation, and DNREC. This Agency's approvals are based on the DE State Fire Prevention Regulations only.

# The DE State Fire Marshal's Office has no objection to the annexation growth and boundaries.

It is suggested that the underlined text be added to the comment in Section 7.2d: The water production capacity of the Town continues to be adequate to provide for current peak demand, required fire flows as defined in the DE State Fire Prevention Regulations, anticipated growth and contractual bulk water sales.

Preliminary meetings with fire protection specialists are encouraged prior to formal submittal. Please call for appointment. Applications and brochures can be downloaded from our website: <a href="https://www.delawarestatefiremarshal.com">www.delawarestatefiremarshal.com</a>, technical services link, plan review, applications or brochures.

## Department of Agriculture - Contact: Milton Melendez 698-4500

The Delaware Department of Agriculture strongly opposes annexation of Agricultural Preservation Districts or Easements into any municipality. The proposed amendment includes two Agricultural Districts, the Pizzadili Expansion and the C. McGinnis Expansion. For the purposes of providing utilities to either one of these properties, the Department encourages the Town of Felton to pursue any legal measure to provide utilities without annexing the above mentioned Preserved Agricultural properties. It is our understanding that provision of utility services outside of the municipality's borders is not prohibited by the Town's charter.

## **Delaware State Housing Authority – Contact Karen Horton 739-4263**

The Town of Felton is considering a Comprehensive Plan amendment in response to a rise in growth and requests for annexation that are located beyond their annexation area. The Town plans to annex the land into their community as residential, but did not clarify the densities. These densities should be indicated on their proposed annexation map and designated at overall higher densities, as opposed to low density, for the following reasons:

- The *Strategies for State Policies and Spending* characterize towns and cities as areas that have a mix of uses and a variety of housing types.
- Land that is zoned for low-density residential development is typically not affordable to low- and moderate-income households.
- Once land is zoned low-density, it is extremely difficult to rezone land for higher densities at a later date.

## Approval Procedures:

- Once all edits, changes and corrections have been made the plan please submit the
  completed document (text and maps) to our office for review. Your PLUS
  response letter should accompany this submission. Also include
  documentation about the public review process. In addition, please include
  documentation that the plan has been sent to other jurisdictions for review and
  comment, and include any comments received and your response to them.
- 2. Our office will require a maximum of 20 working days to complete this review.
- 3. We will provide the Town of Felton with written verification that our office has accepted the plan and all changes for adoption and certification.
- 4. The plan may then be formally adopted by your Planning and Zoning Commission and Town Council.
- 5. Send our office documentation that the plan has been formally adopted by your Planning and Zoning Commission and Town Council. We will also require two (2) bound paper copies of the plan and map series and one (1) electronic copy for our records. We will accept the plan as an amendment to your certified plan. A letter to this effect will be sent within 10 working days. The amendment will not alter your original plan certification date. A full plan update will be due on or before August 11, 2008.

Thank you for the opportunity to review this project. If you have any questions, please contact me at 302-739-3090.

Sincerely,

Constance C. Holland, AICP

Canstine C. Dallack

Director

CC: Davis, Bowen & Friedel

Kent County

Attachment: Annual Report Format